

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: ) Order No. 91-12  
)  
Nelco Oil Recycling Site )  
600 West 12th Street ) ADMINISTRATIVE ORDER  
National City, California 92850 ) PURSUANT TO SECTION 106  
Respondents: ) OF THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,,  
) COMPENSATION, AND  
Nelco Oil Refining Corporation ) LIABILITY ACT OF 1980  
Mr. Roger E. Humphreys ) as amended, 42 U.S.C.  
Mr. Steven B. Humphreys ) Section 9606(a)  
\_\_\_\_\_ )  
\_\_\_\_\_ )

PREAMBLE

This Administrative Order (Order) is issued on this date to Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B and to the Director, Hazardous Waste Management Division, Region IX by Regional Delegations R1290.41 and R1290.42.

The State of California has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondents to undertake and complete emergency removal activities to abate an imminent and substantial endangerment to the public health and welfare or the environment that may be presented by the actual or threatened release of hazardous substances at the Site.

## FINDINGS OF FACT

**A. Site Description:**

Nelco Oil Refinery Corporation ("Nelco") is located at 600 West 12th Street in the city of National City, San Diego County, California.

The Nelco Site ("Site" or "Facility") is situated in a light industrial/residential area and consists of the Nelco Oil Refining Corporation and small portions of four private residences immediately adjacent to the corporation property. The Site is not secured against unauthorized entry by persons of the surrounding community.

The nearest surface water is San Diego Bay, and is located approximately a quarter mile from the Site.

Weather conditions in the area of the Site include periods of high winds, accompanied by seasonal rains.

### B. Site Characteristics:

Nelco owns the property on which the Facility is located. Operation of the Facility by Nelco Oil Refining Corporation began in 1965. During the early days of operation, the Facility

1 received waste oil for recycling, repackaging and distribution  
2 for resale under the Nelco label. In recent years however, Nelco  
3 was operated as an oil transfer station and de-watering facility  
4 only. All oper-  
5 ations at the Site ceased in the summer of 1990.

6 The Site includes the following prominent features:

- 7 - Approximately 24 above ground tanks, averaging 8,000  
8 gallons in size. The majority of the tanks contain either  
9 waste oil or oily water.
- 10 - One 12,000 gallon underground receiving tank likely to  
11 contain oily water.
- 12 - One 6,000 gallon underground spill control tank which is  
13 likely to contain oily water.
- 14 - One asbestos-insulated boiler.
- 15 - A small partially contained land farm treatment area which  
16 is currently being used to store empty drums.
- 17 - Four elevated acid treatment tanks which are likely to be  
18 nearly empty.
- 19 - Four tank truck type vehicles, three of which contain  
20 waste oil.
- 21 - Approximately 60 badly deteriorated 5-gallon pails of  
22 "solvent cutback" which are currently stored in an  
23 unsecured area immediately north of the tank farm area.

24 EPA observed that soil in and around the Facility was  
25 grossly contaminated with lead containing waste oil. The  
26 Facility is not secured to prevent unauthorized access.

1  
2 **C. Respondents:**

3 1. The Nelco Oil Refining Corporation is an active  
4 California Corporation incorporated June 23, 1965. Nelco owns  
5 the property on which the Facility is located.

6 2. Roger E. Humphreys is President and Chief Executive  
7 Officer (CEO) for Nelco Oil Refining Corporation.  
8 Roger E. Humphreys is also identified as the Agent for service of  
9 process with the California Secretary of State's Office.

10 3. Steven B. Humphreys is Vice President (V.P.) for Nelco  
11 Oil Refining Corporation.

12 **D. Incident / Release Characteristics:**

13 During a February 11, 1991, site assessment by the  
14 Environmental Protection Agency and the Technical Assistance  
15 Team, the following conditions were present at the Site:

- 16 - Elevated levels of lead were found in at least four areas  
17 at the Facility. The areas included the access road,  
18 along the western sidewalk, the landfarm area and along  
19 the fence, south of the tank farm. Lead concentrations in  
20 three of these areas exceeded the California State Total  
21 Threshold Limit Concentration (TTLC) of 1000 mg/kg.  
22 Surface lead concentrations within fenced areas of the  
23 facility were generally two to four times the TTLC.  
24 Background concentrations in the area were generally less  
25 than 200 mg/kg.  
26 - Approximately 20 square feet of badly weathered friable  
27 asbestos on top of a boiler in the southwest corner of the

1 Facility. A sample of this material was collected and  
2 analyzed by Department of Health Services in 1990  
3 and found to have an asbestos concentration of  
4 approximately 22.5%. The state regulatory level for  
5 asbestos is 1%.

6 - Approximately 1,500 lb. of sludge in a bermed area beneath  
7 the acid treatment tanks. Analysis of this material by  
8 DHS determined a pH of approximately 1.5.

9 - Approximately 60 5-gallon pails of solvent cutback were  
10 encountered in an unsecured area north of the production  
11 area. EPA observed that the containers were badly damaged  
12 and some spillage was evident.

13 On April 26, 1991, the Department of Health Services (DHS)  
14 formally requested that EPA Region 9, Emergency Response Section  
15 assist DHS in taking steps to immediately stabilize and secure  
16 the Nelco Site.

17 **E. Threats to Public Health, Welfare, and the Environment**

18 The actual or potential exposure to hazardous substances or  
19 pollutants or contaminants to nearby populations, animals, or the  
20 food chain is present at the Facility. The occurrence of high  
21 concentrations of lead in surface soils and exposed areas of  
22 friable asbestos may expose nearby residents to unacceptable  
23 risks. The risks of lead exposure to public health has been well  
24 documented by the Agency for Toxic Substances and Disease  
25 Registry (ATSDR). Exposure to lead by pregnant women may result  
26 in pre-term births, reduced birth weights, and a decrease in the  
27 intelligence quotient (IQ) in infants. Lead exposure may

1 increase blood pressure, and at high levels can severely damage  
2 the brain and kidneys in adults or children. Additional health  
3 effects have been documented and are the same regardless of  
4 whether lead enters the body through breathing or ingestion. The  
5 adverse health effects of exposure to asbestos fibers have been  
6 well documented. The principle health effects of asbestos  
7 include cancer of the lung, mesothelioma and asbestosis. In  
8 addition, direct contact with any of the uncontained acid sludges  
9 encountered on-site may result in severe skin irritations.

#### 10 CONCLUSIONS OF LAW

11 Based on the foregoing Findings, U.S. EPA has concluded  
12 that:

13 1. The Nelco Oil Refining Corporation located at 600 West 12th  
14 Street in National City, California is a "facility" as defined by  
15 Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

16 2. Each Respondent is a "person" as defined by Section 101(21)  
17 of CERCLA, 42 U.S.C. Section 9601(21).

18 3. Respondents, Nelco, Roger E. Humphreys and Steven B.  
19 Humphreys, are the past or present "owners" or "operators" of the  
20 Facility and are therefore liable persons under Section 107(a) of  
21 CERCLA, 42 U.S.C. Section 9607.

22 4. Lead, asbestos, and acidic sludges are "hazardous substances"  
23 as defined by Section 101(14) of CERCLA, 42 U.S.C. Section  
24 9601(14).

25 5. The presence of hazardous substances on Site and the  
26 potential for those substances to leak, mix or migrate

1 constitutes an actual or threatened "release" as that term is  
2 defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

3 DETERMINATIONS

4 Based on the Findings of Fact and Conclusions of Law, the  
5 Director of the Hazardous Waste Management Division, EPA Region  
6 IX, has made the following determinations:

7 1. The actual or threatened release of hazardous substances  
8 from the Facility may present an imminent and substantial  
9 endangerment to the public health, welfare, or the environment.

10 2. The actions required by this Order, if properly performed,  
11 are consistent with the National Contingency Plan (NCP), 40  
12 CFR Part 300 and CERCLA; and are reasonable and necessary to  
13 protect the public health, welfare and the environment.

14 3. The conditions present at the Facility constitute a threat  
15 to public health or welfare or the environment based upon  
16 consideration of the factors set forth in the NCP at 40 CFR  
17 section 300.415(b). These factors include, but are not limited  
18 to, the following:

19 a. Actual or potential exposure to hazardous substances or  
20 pollutants or contaminants to nearby populations, animals, or  
21 food chains. This factor is present at the Facility due to the  
22 existence of high concentrations of lead in surface soils and the  
23 proximity of exposed areas of friable asbestos to nearby  
24 residents. In addition, the acid sludge presents a potential  
25 exposure threat to nearby residents.

26 b. High levels of hazardous substances or pollutants or  
27 contaminants in soils largely at or near the surface, that may

1 migrate off-site. This factor is present at the Facility due to  
2 the existence of elevated levels of lead in surface soils and  
3 acid sludges present in a bermed area beneath the acid treatment  
4 tanks.

5 c. Weather conditions that may cause hazardous substances  
6 or pollutants or contaminants to migrate when released. This  
7 factor is present at the Facility due to the dry windy conditions  
8 normal for the National City area at this time of year. Future  
9 rains can be expected to result in lead contaminated run-off in  
10 an overflow of the on-site spill containment system.

11 d. The unavailability of other appropriate Federal or  
12 State response mechanisms to respond to the release. This factor  
13 is present at the Facility because the Department of Health  
14 Services is unable to accomplish the proposed immediate site  
15 stabilization effort due to lack of available funding.

#### 16 ORDER

17 Based upon the foregoing Findings, Conclusions and  
18 Determinations, and pursuant to Section 106(a) of CERCLA, 42  
19 U.S.C. Section 9606(a), it is hereby Ordered that Respondents  
20 undertake the following actions under the direction of EPA's On-  
21 Scene Coordinator.

22 **1. Within five (5) calendar days** after the effective date of  
23 this Order, the Respondents shall submit to U.S. EPA for  
24 approval, a Work Plan for the removal actions ordered as  
25 set forth in Paragraph 4 below. The Work Plan shall provide  
26 a concise description of the activities to be conducted to



1 comply with the requirements of this Order. The Work Plan shall  
2 describe how the Respondents shall restrict access to the Site  
3 and shall not allow any materials, equipment or any other item to  
4 be removed from the Site without prior EPA approval. The Work  
5 Plan shall be reviewed by U.S. EPA, which may approve,  
6 disapprove, require revisions, or modify the Work Plan.  
7 Respondents shall implement the Work Plan as finally approved by  
8 U.S. EPA. Once approved, the Work Plan shall be deemed to be  
9 incorporated into and made a fully enforceable part of this  
10 Order.

11 2. The Work Plan shall contain a site safety and health plan, a  
12 sampling and analysis plan, and a schedule of the work to be  
13 performed. The site safety and health plan shall be prepared in  
14 accordance with EPA's Standard Operating Safety Guide, dated  
15 November 1984 and updated July 1988 and with the Occupational  
16 Safety and Health Administration (OSHA) regulations applicable to  
17 Hazardous Waste Operations and Emergency Response, 29 CFR Part  
18 120. The Work Plan and other submitted documents shall  
19 demonstrate that the Respondents can properly conduct the actions  
20 required by this Order.

21 3. Respondents shall retain a contractor qualified to undertake  
22 and implement the requirements of this Order.

23 4. **Within 10 calendar days** after U.S. EPA approval of the Work  
24 Plan, Respondents shall implement the Work Plan as approved or  
25 modified by U.S. EPA. Failure of the Respondents to properly  
26 implement all aspects of the Work Plan shall be deemed to be a  
27 violation of the terms of this Order. The Work Plan shall

1 require the Respondents to perform, and complete within thirty  
2 (30) calendar days after approval, at a minimum, the following  
3 removal activities:

- 4 a. Remove, treat or stabilize the exposed friable asbestos  
5 present at the Site.
- 6 b. Remove, treat or stabilize the acidic sludge that has  
7 collected in the bermed area below the acid treatment  
8 tanks.
- 9 c. Remove, treat or stabilize all areas of high surface  
10 lead soil contamination present at and near the  
11 Facility.
- 12 d. Confirm that the Facility runoff and spill control  
13 measures in place will adequately prevent runoff from  
14 leaving the Facility.
- 15 e. Restrict public access to the Site by installation of  
16 of a fence with signs alerting the public to hazardous  
17 conditions present.

18 5. Each Respondent shall fully implement the plan as approved  
19 by EPA within the required time period, and shall fully cooperate  
20 with each other in carrying out any and all activities required  
21 pursuant to this Order.

22 6. EPA shall be informed verbally at least **forty-eight (48)**  
23 hours prior to any on-Site work.

24 7. All materials containing hazardous substances, pollutants or  
25 contaminants removed pursuant to this Order shall be disposed of  
26 or treated at a facility approved by the On-Scene Coordinator and  
27 in accordance with the Resource Conservation and Recovery Act of

1 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the  
2 U.S. EPA Revised Off-Site Policy, and all other applicable  
3 Federal, State, and local requirements.

4 **8.** On or before the effective date of this Order, the  
5 Respondents shall designate one Project Coordinator. To the  
6 greatest extent possible, the Project Coordinator shall be  
7 present on site or readily available during site work. The U.S.  
8 EPA has designated William E. Lewis as its On-Scene Coordinator.  
9 The On-Scene Coordinator and the Project Coordinator shall be  
10 responsible for overseeing the implementation of this Order. To  
11 the maximum extent possible, communication between the  
12 Respondents and the U.S. EPA, and all documents, reports and  
13 approvals, and all other correspondence concerning the activities  
14 relevant to this Order, shall be directed through the On-Scene  
15 Coordinator and the Project Coordinator.

16 **9.** The U.S. EPA and the Respondents shall each have the right  
17 to change their respective designated On-Scene Coordinator or  
18 Project Coordinator. U.S. EPA shall notify the Respondents,  
19 and Respondents shall notify U.S. EPA, as early as possible  
20 before such a change is made, but in no case less than 24 hours  
21 before such a change. Notification may initially be verbal, but  
22 shall promptly be reduced to writing.

23 **10.** The U.S. EPA On-Scene Coordinator shall have the authority  
24 vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300,  
25 as amended, including the authority to halt, conduct, or direct  
26 any work required by this Order, or to direct any other response  
27 action undertaken by U.S. EPA or the Respondents at the Site.

1     **11.**    No extensions to the above time frames shall be granted  
2     without sufficient cause. All extensions must be requested, in  
3     writing, and shall not be deemed accepted unless approved, in  
4     writing, by U.S. EPA.

5     **12.**    All instructions by the U.S. EPA On-Scene Coordinator or  
6     his designated alternate shall be binding upon the Respondents  
7     as long as those instructions are not clearly inconsistent with  
8     the National Contingency Plan.

9     **13.**    To the extent that the Site or other areas where work under  
10    this Order is to be performed is owned by, or in possession of,  
11    someone other than the Respondents, Respondents shall obtain all  
12    necessary access agreements. In the event that after using their  
13    best efforts Respondents are unable to obtain such agreements,  
14    Respondents shall immediately notify U.S. EPA.

15    **14.**    Respondents shall provide access to the Facility to  
16    U.S. EPA employees, contractors, agents, and consultants at  
17    reasonable times, and shall permit such persons to be present and  
18    move freely in the area in order to conduct inspections,  
19    including taking photographs and videotapes of the Site, to  
20    do cleanup/stabilization work, to take samples to monitor the  
21    work under this Order, and to conduct other activities which the  
22    U.S. EPA determines to be necessary.

23    **15.**    Nothing contained herein shall be construed to prevent  
24    U.S. EPA from seeking legal or equitable relief to enforce  
25    the terms of this Order, or from taking other legal or equitable  
26    action as it deems appropriate and necessary, or from requiring

1 the Respondents in the future to perform additional activities  
2 pursuant to CERCLA, 42 U.S.C. Section 9601, et seq., or any other  
3 applicable law.

4 **16.** The provisions of this Order and the directions of the  
5 On-Scene Coordinator shall be binding on the employees, agents,  
6 successors, and assigns of the Respondents.

7 **17.** The effective date of this Order shall be **two (2) working**  
8 **days** following the date of EPA's signature unless a conference is  
9 requested as provided herein. If a conference is requested, this  
10 Order shall be effective three (3) days following the conference  
11 unless modified in writing by U.S. EPA.

12 **18.** On or before **twenty-four (24) hours** of the effective date  
13 of this Order, Respondents shall provide notice, verbally or in  
14 writing, to U.S. EPA stating their intention to comply with the  
15 terms of this Order. Verbal notification must be followed in  
16 writing within three (3) calendar days. In the event any  
17 Respondents fail to provide such notice, those Respondents shall  
18 be deemed not to have complied with the terms of this Order.

19 **19.** Respondents shall retain copies of all records and files  
20 relating to hazardous substances found on the site shall be  
21 retained for six years following completion of the activities  
22 required by this Order and shall make such records and files  
23 available to the U.S. EPA, prior to the termination of the  
24 removal activities under this Order.

25 **20.** The Workplan, notices, reports and requests for extensions  
26 submitted under terms of this Order shall be sent by certified  
27 mail, return receipt requested, and addressed to the following:

1           one copy       William E. Lewis  
2                           On-Scene Coordinator  
3                           U.S. EPA (H-8-3)  
4                           75 Hawthorne Street  
5                           San Francisco, CA 94105  
6

7           one copy       Allyn Stern  
8                           Assistant Regional Counsel  
9                           U.S. EPA Office of Regional Counsel (RC-3-3)  
10                          75 Hawthorne Street  
11                          San Francisco, CA 94105  
12

13   21. If any provision of this Order is deemed invalid or  
14   unenforceable, the balance of this Order shall remain in full  
15   force and effect.

16                           ACCESS TO ADMINISTRATIVE RECORD FILE

17           The Administrative Record File supporting the selection of  
18   the response action for this site will be available for review on  
19   normal business days between the hours of 9:00 a.m. and 5:00 p.m.  
20   in the Superfund Records Center, United States Environmental  
21   Protection Agency, Region IX, 75 Hawthorne Street, 9th Floor, San  
22   Francisco, California. An index to the Administrative Record  
23   File is attached hereto.

24                           OPPORTUNITY TO CONFER

25           With respect to the actions required above, Respondents may  
26   within two (2) calendar days after issuance of this Order,  
27   request a conference with the U.S. EPA. Any such conference  
28   shall be held within five (5) calendar days from the date of  
29   request unless extended by mutual agreement of the parties. At  
30   any conference held pursuant to the request, Respondents may  
31   appear in person, or be represented by an attorney or other  
32   representative. If any Respondent desires such a conference, the  
33   Respondent shall contact Allyn Stern, Assistant Regional Counsel,

1 at (415) 744-1376. If such a conference is held, Respondents may  
2 present any evidence, arguments, or comments regarding this  
3 Order, its applicability, any factual determinations upon which  
4 the Order is based, the appropriateness of any action which  
5 Respondents are ordered to take, or any other relevant and  
6 material issue. Any such evidence, arguments or comments should  
7 be reduced to writing and submitted to U.S. EPA within three (3)  
8 calendar days following the conference. If no conference is  
9 requested, any such evidence, arguments or comments must be  
10 submitted in writing within five (5) calendar days following the  
11 issuance of this Order. Any such writing should be directed to  
12 Allyn Stern, Assistant Regional Counsel, at the address cited  
13 above.

14 Respondents are hereby placed on notice that U.S. EPA will  
15 take any action which may be necessary in the opinion of U.S. EPA  
16 for the protection of public health and welfare and the  
17 environment, and Respondents may be liable under Section 107(a)  
18 of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those  
19 government actions.

#### 20 PENALTIES FOR NONCOMPLIANCE

21 Respondents are advised pursuant to Section 106(b) of  
22 CERCLA, 42 U.S.C. Section 9606(b), that willful violation or  
23 subsequent failure or refusal to comply with this Order, or any  
24 portion thereof, may subject the Respondents to a civil penalty  
25 of up to \$25,000 per day for each day in which such violation  
26 occurs, or such failure to comply continues. Failure to comply  
27 with this Order, or any portion thereof, without

1 sufficient cause may also subject the Respondents to liability  
2 for punitive damages in an amount three times the amount of  
3 any cost incurred by the government as a result of the failure of  
4 Respondents to take proper action, pursuant to Section 107(c)(3)  
5 of CERCLA, 42 U.S.C. Section 9607(c)(3).  
6

7  
8 IT IS SO ORDERED on this 28<sup>th</sup> day of May, 1991.  
9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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12  
13 By: J. Straus  
14 Jeff Zelikson, Director  
15 Hazardous Waste Management Division  
16 United States Environmental  
17 Protection Agency Region IX  
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1 cc: Roger Post  
2 City of National City  
3 Planning Department  
4 1243 National City Boulevard  
5 National City, California 92050-4397  
6

7 George Baker  
8 State of California  
9 Department of Health Services  
10 Toxic Substances Control Program  
11 245 West Broadway, Suite 350  
12 Long Beach, CA 90802  
13

14 James B. Shaw  
15 County of San Diego  
16 Department of Health Services  
17 1255 Imperial Ave., 3rd Fl., P.O. Box 85261  
18 San Diego, California 92138-5261  
19

20 Allyn Stern (RC-3-3)  
21 U.S. Environmental Protection Agency  
22 Office of Regional Counsel  
23 75 Hawthorne Street  
24 San Francisco, CA 94105  
25

26 Brent Maier (H-8-3)  
27 U.S. Environmental Protection Agency  
28 Emergency Response Section  
29 75 Hawthorne Street  
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32 William E. Lewis (H-8-3)  
33 U.S. Environmental Protection Agency  
34 Emergency Response Section  
35 75 Hawthorne Street  
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37

38 Enforcement File  
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INDEX TO ADMINISTRATIVE RECORD FILE

1. Guidance Document: Superfund Removal Procedures #3, OSWER #9360.0-038, 02/01/88.
2. Guidance Document: Removal Cost Management Manual (Secondary Reference), OSWER #9360.0-028, 04/01/88.
3. Guidance Document: Land Disposal Restrictions, 08/11/87.
4. Guidance Document: Emergency Response Cleanup Services Contracts (ERCS), Users' Manual, October 1983, 10/01/83.
5. Guidance Document: National Oil & Hazardous Substances Pollution Contingency Guidance, Part 300, 40 CFR CH.1 (7/1/85 Edition), pp. 664 - 755, 07/01/85.
6. Guidance Document: Superfund Amendments & Reauthorization Act of 1986 (SARA), 10/17/86.
7. Guidance Document: Interim Guidance on Administrative Records for Selection of CERCLA Response Actions, OSWER 9833.3A, 03/01/89.
8. Guidance Document: Superfund LDR Guide #7: Determining When Land Disposal Restrictions (LDRs) are "Relevant and Appropriate" to CERCLA Response Actions, OSWER 9347.3-08FS, 12/01/89.
9. Technical Assistance Team Report from Preliminary Assessment